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UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 SAN FRANCISCO DIVISION

HONGJUN YUAN; and MEIMEI FU,)	No. C 07-3750 JL
)	
Plaintiffs,)	
)	
v.)	DEFENDANTS' RESPONSE IN
)	SUPPORT OF EX PARTE MOTION
MICHAEL CHERTOFF, Secretary,)	PURSUANT TO FED. R. CIV. P. 56(f)
Department of Homeland Security; and)	
ROBERT S. MUELLER, Director of the)	
Federal Bureau of Investigation,)	
)	
Defendants.)	

I. INTRODUCTION

Plaintiffs oppose Defendants' Rule 56(f) Motion, arguing that their Motion for Summary Judgment is not premature. They suggest that the facts of the case at hand are simple, and that accordingly, Defendants have had sufficient time in the past six weeks to investigate his claims. Plaintiffs' arguments are without merit. While the facts may appear simple to them, Defendants simply have not been accorded sufficient time to investigate their claims, and should not be forced to defend themselves just a few days after the date an answer is due.

II. ANALYSIS

Plaintiffs cite several cases from this District in support of their argument that relief should be granted solely on the length of delay. In particular, they cite Gelfer v. Chertoff, No. 06-06724

1 WHA, 2007 WL 902382 (N.D. Cal. Mar. 22, 2007); however, that case does not support their
2 argument. Judge Alsup specifically noted that it was inappropriate, at the dismissal stage, to decide
3 whether the delay was unreasonable. 2007 WL 902382, at *2. The other two cases Plaintiffs cite
4 involved much lengthier periods of delay. Singh v. Still, 470 F. Supp. 2d 1064 (N.D. Cal. 2007);
5 Aboushaban v. Mueller, No. C 06-1280 BZ, 2006 WL 3041086 (N.D. Cal. Oct. 24, 2006). Here,
6 Defendants must be allowed sufficient time to investigate the nature of the alleged delay.

7 Defendants have clearly indicated, through the declaration of undersigned counsel, that they
8 require additional time in order to fully defend themselves in this action. Plaintiffs also suggest that
9 “Defendants have failed to indicate that they are without fault in creating the crisis that requires ex
10 parte relief.” Undersigned counsel learned that Plaintiffs’ counsel intended to file motions for
11 summary judgment on a number of cases, and attempted to dissuade him from doing so, explaining
12 that courts disfavor such early Rule 56 motions. See Exh. A. Plaintiffs’ counsel did not attempt to
13 negotiate a more reasonable briefing schedule, and instead, filed the motion for summary judgment
14 at issue just a day later. See Exh. B. The date noticed would require Defendants to defend
15 themselves just two days after answering the Complaint. Thus, Plaintiffs created the situation
16 requiring Defendants to file the instant Rule 56(f) Motion.

17 Plaintiffs asks the Court to require Defendants to state with particularity what evidence might
18 exist that would allow them to defend their claims. Defendants cannot describe what they do not
19 know, and what they have not been afforded an opportunity to discover. Indeed, at this juncture,
20 Defendants do not even know how they will respond to the allegations in the Complaint. Plaintiffs
21 are correct in one regard: cases such as the case at hand do not require lengthy discovery schedules.
22 However, Defendants must be provided an opportunity to investigate and defend against Plaintiffs’
23 claims. See Harris v. City of Seattle, 315 F. Supp. 2d 1112, 1120 (W.D. Wash. 2004)
24 (characterizing as early a motion filed before defendants had an opportunity to pursue discovery and
25 obtain necessary defensive evidence).

26 Moreover, Defendants do not ask for an unreasonable amount of time. Defendants have
27 proposed a schedule that is in accordance with past practice, calculated from the date of the Case
28 Management Conference, and within the Court’s calendar of availability. Plaintiffs’ proposed

1 schedule denies Defendants the process that is due to them. Defendants have established good cause
2 for extending the hearing schedule.

3 **III. CONCLUSION**

4 For the foregoing reasons, Defendants respectfully request the Court to refuse Plaintiffs'
5 Motion for Summary Judgment, or continue the hearing date to December 12, 2007.

6 Dated: September 14, 2007

Respectfully submitted,

7 SCOTT N. SCHOOLS
8 United States Attorney

9 /s/
10 MELANIE L. PROCTOR
Assistant U.S. Attorney